

---

## **OLR Bill Analysis**

### **sSB 67**

#### ***AN ACT CONCERNING REVISIONS TO THE BANKING STATUTES.***

#### **SUMMARY:**

This bill makes numerous changes to the banking law.

It broadens the banking commissioner's investigatory powers subject to the Freedom of Information Act and the confidentiality requirements for state banking records and enables him to order restitution and disgorgement for banking law violations.

It makes several changes to mortgage licensing provisions, including to exemptions from mortgage licensing requirements. For example, it modifies the existing licensing exemption for "quasi-governmental agencies" to instead apply to "housing finance agencies." It also exempts bona fide nonprofit organizations that promote affordable housing or provide home ownership education or similar services.

The bill (1) requires qualified individuals and branch managers working for lenders or brokers to be licensed as mortgage loan originators and to complete any applicable continuing education requirements by November 1, 2012; (2) changes loan processor or underwriter licensing requirements; and (3) prohibits the commissioner from denying a mortgage licensing application on the basis of an expunged criminal conviction.

It requires each bank to (1) review a mortgage loan before excusing the borrower from amortization of the loan principal and requires each bank to (2) consider an obligor's credit exposure arising from a derivative transaction when determining the obligor's liability limitations.

The bill removes a loan production office from the definition of

“limited branch.”

The bill prohibits non-bank entities, not just corporations, from acting as trustees without a license. It also eliminates the reciprocity requirement that an out-of-state bank, other than a foreign bank, must meet under current law in order to establish a de novo branch in Connecticut.

Finally, the bill makes a clarifying change regarding interest on residential security deposits; It also adds and modifies several definitions; and makes minor, technical, and conforming changes.

EFFECTIVE DATE: Various; see below

## **BANKING ADMINISTRATION AND ENFORCEMENT**

### **§ 4 — *Investigations and Examinations; Subpoena Power***

Under current law, the banking commissioner may make public or private investigations or examinations in or outside of Connecticut, concerning any person subject to his jurisdiction, as he deems necessary to carry out his duties.

This bill subjects the commissioner’s investigatory powers to the Freedom of Information Act (FOIA) and the confidentiality requirements for state banking records. Additionally, the bill authorizes the banking commissioner, subject to FOIA and these confidentiality requirements, to:

1. require or permit a person to testify, produce a record, or file a statement under oath, or otherwise as he determines, about a matter relevant to a matter to be investigated or to a pending proceeding; and
2. publish information concerning statutory violations within his jurisdiction or any regulation or order adopted or issued under such statutes.

The law already authorizes the commissioner to administer oaths and affirmations, subpoena witnesses, compel attendance of witnesses,

take evidence, require written statements, and require the production of records which he deems relevant or material for an investigation.

The bill also authorizes the commissioner to issue subpoenas in Connecticut at the request of another state, as long as (1) the same actions would serve as a basis for an investigation or other proceeding if they had occurred in Connecticut and (2) the other state has reciprocal legal authority to issue subpoenas in that state on behalf of the commissioner.

EFFECTIVE DATE: October 1, 2012

### **§ 5 — *Enforcement Action***

The bill expands the commissioner's authority over a person found, as the result of an investigation, to be violating a banking law, regulation, rule, or order.

Among other enforcement authority, existing law authorizes the commissioner to apply to the Hartford Superior Court for an order that someone committing violations within his jurisdiction pay restitution, plus interest, for money illegally obtained.

The bill allows him, in addition to his other enforcement authority and without seeking a court order, to order the person to either make restitution plus interest or disgorge any money obtained illegally, or both. The person may request a hearing, in accordance with the Uniform Administrative Procedure Act, within 14 days of receiving the order. The commissioner already has this authority regarding securities violations.

EFFECTIVE DATE: October 1, 2012

## **MORTGAGE LICENSING**

### **§§ 7-8 — *Mortgage Loan Originator Definition and Exemptions***

Current law defines a mortgage loan originator, subject to certain exemptions, as someone who, for compensation or gain or the expectation of such (1) takes a residential mortgage loan application or (2) offers or negotiates residential mortgage loan terms. The bill

specifies that this includes someone either acting for personal compensation or gain or for the compensation or gain of his or her employer or retainer.

The bill specifies that, for licensing purposes, an individual is acting as a mortgage loan originator, unless exempt, if he or she:

1. does so in connection with any residential mortgage loan on behalf of a licensee or person exempt from licensing as a mortgage lender, correspondent lender, or broker or
2. makes any representation to the public through advertising or other means of communication that he or she can or will act as a mortgage loan originator on behalf of a licensee or a person exempt from licensure.

The bill exempts from mortgage loan originator licensing requirements:

1. an individual who takes residential mortgage applications or offers or negotiates residential mortgage terms while acting in his or her official capacity as an employee of a (a) federal, state or local government agency, (b) housing finance agency exempt from licensure, or (c) a bona fide nonprofit organization exempt from licensure; and
2. an individual who offers or negotiates the terms of a residential mortgage loan secured by a dwelling that he or she owns but does not live in, unless he or she habitually or repetitively makes such offers or negotiations.

Current law exempts from originator licensing requirements an individual who offers or negotiates the terms of a residential mortgage loan secured by a dwelling where the person lives. Under the bill, this exemption does not apply if he or she habitually or repetitively makes such offers or negotiations.

EFFECTIVE DATE: October 1, 2012

**§ 7 — Mortgage Broker Definition**

The bill modifies exclusions from the definition of mortgage brokers. The law defines a mortgage broker as a person who, for compensation or gain or the expectation of such, takes a residential mortgage loan application or offers or negotiates a residential mortgage loan's terms. The bill adds the condition that the person not be the prospective source of the funds for the loan.

Current law excludes from the definition someone who is sponsored by another mortgage lender, correspondent lender, or broker. The bill instead excludes (1) an individual who is licensed and acting as a mortgage loan originator on behalf of his or her sponsoring mortgage lender, correspondent lender, broker, or exempt registrant, or (2) an individual exempt from mortgage loan originator licensure when acting within the scope of the exemption.

EFFECTIVE DATE: October 1, 2012

**§ 9 — Mortgage Lender and Correspondent Lender Licensing Exemption**

The bill modifies the existing exemption from mortgage lender and mortgage correspondent lender licensure for "quasi-governmental agencies" to instead apply to "housing finance agencies." These agencies are exempt when making residential loans under the specific authority of any state's law or federal law.

The bill defines a housing finance agency as any authority (1) chartered by a state to help meet the affordable housing needs of the state's residents, (2) supervised directly or indirectly by the state government, (3) subject to state audit and review, and (4) whose activities make it eligible to be a National Council of State Housing Agencies member (see BACKGROUND).

Current law exempts a person making a secondary mortgage loan to a person related to him or her by blood or marriage. The bill narrows this exemption to a person making a secondary mortgage loan to an immediate family member.

EFFECTIVE DATE: October 1, 2012

**§ 9 — *Bona Fide Nonprofit Organizations Licensing Exemption***

The bill exempts a bona fide nonprofit organization from licensing as a mortgage broker when the organization brokers residential loans exclusively made by (1) any corporation or affiliate that makes residential mortgage loans exclusively for the benefit of its employees or agents, or (2) any insurance company or health care center, or its affiliate or subsidiary, that makes residential mortgage loans to promote home ownership in urban areas. (By law, both (1) and (2) are also exempt from licensing as mortgage lenders or correspondent lenders.)

Current law exempts from mortgage lender or correspondent lender licensing requirements any bona fide nonprofit corporations that make residential mortgages promoting home ownership for the economically disadvantaged. The bill extends this exemption to bona fide nonprofit organizations, not just corporations, meeting this standard.

For these purposes, the bill defines a bona fide nonprofit organization as an organization that has filed a written, certified submission, with the appropriate documentation, with the commissioner, demonstrating that the organization:

1. is a federally tax-exempt organization;
2. promotes affordable housing or provides home ownership education or similar services;
3. acts in a way that serves public or charitable, rather than commercial, purposes;
4. receives funding and revenue, charges fees, and compensates its employees in a way that does not incentivize it or its employees to act other than in the best interests of its clients;
5. provides or identifies for the borrower residential mortgage

loans (a) with favorable terms to the borrower (i.e., terms consistent with loan origination in a public or charitable, and not commercial, context) and (b) comparable to mortgage loans and housing assistance provided under government housing assistance programs; and

6. meets any other standards the commissioner may by regulation require.

The bill requires each bona fide nonprofit organization to submit a renewed certification and documentation with any updated information to the commissioner no later than December 31<sup>st</sup> of each year.

EFFECTIVE DATE: October 1, 2012

#### **§ 8 — *Loan Processors or Underwriters***

Current law requires a loan processor or underwriter to be licensed if he or she is (1) an independent contractor or (2) employed by any person other than a licensed mortgage lender, correspondent lender, or broker, or specified financial institution exempt from such licensure.

The bill instead provides an exemption from loan processor or underwriter licensing requirements for:

1. an employee of a licensed mortgage lender, correspondent lender, or broker who processes or underwrites (a) residential mortgage loans originated or made by the licensee, and (b) at the direction, and subject to the supervision, of a licensed mortgage loan originator;
2. an employee of a specified financial institution exempt from mortgage lender, correspondent lender, or broker licensing who processes or underwrites loans at the direction of and subject to the supervision of either a licensed mortgage loan originator or a registered mortgage loan originator of the exempt entity; or
3. any individual engaged in loan processing or underwriting in

connection with a residential mortgage loan originated by an individual not required to be licensed or registered as a mortgage loan originator.

The bill also excludes loan processors or underwriters who are exempt from licensing from the requirement that they register with and maintain a valid unique identifier with the Nationwide Mortgage Licensing System (“system”) (see BACKGROUND).

The bill prohibits loan processor or underwriter licensees from being sponsored by more than one person at a time.

EFFECTIVE DATE: October 1, 2012

**§ 7 — *Employee and Independent Contractor Definitions***

The mortgage licensing laws refer in various places to licensees or exempt registrants sponsoring someone, and define “sponsored” for this purpose as employed or retained as an independent contractor.

The bill defines an independent contractor as an individual (1) retained on a basis where he or she is not the employee of anyone in connection with the services provided and (2) whose compensation is reported on an IRS Form 1099 issued by the retaining person.

Various provisions in the mortgage licensing laws also refer to employees. The bill defines an employee as an individual whose (1) work performance is subject to the right of control of, or is controlled by, a person, and (2) compensation is reported on a W-2 form issued by the controlling person. For purposes defining a “registered mortgage loan originator,” the term “employee” retains this meaning or any meaning the federal banking agencies issue in connection with the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E. Act).

By law, a “registered mortgage loan originator” is any individual who (1) meets the definition of mortgage loan originator and is an employee of a depository institution, a subsidiary owned and controlled by a depository institution and regulated by a federal



banking agency, or an institution regulated by the Farm Credit Administration; and (2) is registered with, and maintains a unique identifier through, the system.

EFFECTIVE DATE: October 1, 2012

**§ 10 — Application Requirements**

The law requires any applicant for a mortgage lender, correspondent lender, or broker license to have a qualified individual at each main office and a branch manager at each branch office. The bill requires that, effective November 1, 2012, the qualified individuals and branch managers be licensed as mortgage loan originators.

EFFECTIVE DATE: October 1, 2012

**§§ 11 - 13 — Standards for Licensing**

The bill prohibits the banking commissioner from denying a mortgage lender, correspondent lender, broker, loan originator, or loan processor or underwriter license on the basis of an expunged criminal conviction. The law already prohibits the banking commissioner from denying such licenses on the basis of a pardoned criminal conviction.

The bill also specifies that the level of criminal offense and the status of any conviction, pardon, or expungement will be determined based on the law of the jurisdiction where the case was prosecuted.

The bill requires that, by November 1, 2012, a qualified individual or branch manager seeking initial licensure as a mortgage loan originator complete any continuing education requirements associated with his or her current position.

For mortgage lenders, correspondent lenders, or brokers seeking license renewal, the bill requires that, effective November 1, 2012, their qualified individuals and branch managers be (1) licensed as originators and (2) have completed continuing education requirements.

Under the bill, a qualified individual or branch manager who held

the position at a time prior to the implementation of the mortgage loan originator licensing requirements cannot hold such a position again before completing all continuing education requirements for the year in which he or she last held the position and, effective November 1, 2012, must obtain the required license before holding such a position again.

The bill decreases, from four to three, the number of consecutive times an applicant may retake a test, with each consecutive test occurring at least 30 days after the previous test, before he or she must wait at least six months to retake the test.

The bill makes other minor and conforming changes related to education and testing requirements.

EFFECTIVE DATE: October 1, 2012

**§§ 8, 14 — *Banking Commissioner Enforcement Action***

The bill allows the commissioner to bring an enforcement action or issue a cease and desist order if it appears to him that someone was or would violate the mortgage licensing statutes or regulations due to an act or omission the person knew or should have known would contribute to the violation.

The law already allows the commissioner to bring an enforcement action or issue a cease and desist order if it appears to him that (1) someone has violated, is violating, or is about to violate the mortgage licensing statutes or regulations or (2) a licensee has failed to perform an agreement with a borrower, committed any fraud, misappropriated funds, or misrepresented, concealed, suppressed, intentionally omitted, or otherwise intentionally failed to disclose any material particulars of any residential mortgage loan transaction to anyone entitled to such information.

Existing law also allows the commissioner to suspend, revoke, or refuse to renew any mortgage lender, correspondent lender, or broker license for any reason that would be sufficient to deny a license application, or if he finds that a licensee, the licensee's control person,

the qualified individual or branch manager with supervisory authority, trustee, employee, or agent of the licensee has:

1. made any material misstatement in the license application;
2. committed any fraud, misappropriated funds, or misrepresented, concealed, suppressed, intentionally omitted, or otherwise intentionally failed to disclose any of the material particulars of any residential mortgage loan transaction;
3. violated any of the licensing provisions or laws or regulations applicable to the conduct of its business; or
4. failed to perform any agreement with a licensee or a borrower.

The bill specifies that the term “agent”, when used in reference to individuals under the banking commissioner’s jurisdiction, includes any settlement agent used by the licensee. The bill also defines a “settlement agent” as a person specified in an HUD-1 settlement statement (which HUD furnishes to give the homeowner a statement of actual settlement costs) who was selected by the licensee. Any settlement agent appearing on the licensee’s list of approved settlement agents is deemed selected by the licensee even if the borrower selects the name from the list.

Under current law, each residential mortgage loan negotiated, solicited, arranged, placed, found, or made without a license constitutes a separate violation for purposes of the commissioner’s general enforcement authority. The bill provides that this also applies to each such loan taken, offered, processed, or underwritten without a license.

EFFECTIVE DATE: October 1, 2012

#### **§ 16 — Reporting Requirements**

Current law requires each licensed mortgage lender, correspondent lender, broker, loan originator, and loan processor or underwriter to submit reports of condition to the system. The bill broadens the

category to exempt registrants, to the extent required by the system, and requires the reports to be accurate and submitted in a timely manner. A licensee's failure to submit a timely and accurate report of condition constitutes a violation of this provision.

Additionally, the bills makes an exempt registrant's failure to timely and accurately submit a report of condition a basis to inactivate the licenses of all sponsored mortgage loan originators or loan processors or underwriters. To the extent the system does not require individual mortgage loan originator or loan processor or underwriter licensees to submit reports of condition, the licensees must timely and accurately report all required information in their possession to their sponsor for the sponsor's reporting obligation. Failure to do so constitutes a violation of this provision.

EFFECTIVE DATE: October 1, 2012

#### **§§ 18 - 21, 31 — LOAN PRODUCTION OFFICE**

The bill defines a loan production office as an office of a bank or out-of-state bank, other than a foreign bank, whose activities are limited to loan production and solicitation. The bill enables Connecticut banks and out-of state banks other than foreign banks, with the approval of the banking commissioner, to establish loan production offices in the state.

Current law defines a "limited branch" to mean any office at a fixed location of a Connecticut bank at which banking business is conducted other than the main office, branch, or mobile branch. The bill also excludes loan production offices from this definition of limited branch, exempting loan production offices from certain requirements that apply to limited branches (e.g., notice requirements for branch closures).

The bill imposes a \$1,000 application fee to establish a loan production office. By law, the fee to establish a limited branch is \$1,500.

EFFECTIVE DATE: Upon passage

**LOANS****§ 22 — *Mortgage Amortization***

Current law allows a Connecticut bank, at its discretion, to excuse a mortgage loan borrower from amortization of the loan principal. This bill requires the bank's governing board, or a management committee or board committee designated by the governing board, to first review the mortgage loan and determine that excusing the borrower from amortization would be prudent under the circumstances.

EFFECTIVE DATE: Upon passage

**§ 23 — *Derivative Transactions***

The bill requires a bank to consider an obligor's credit exposure arising from a derivative transaction when determining the obligor's liability limitations. It gives the commissioner the authority to establish a method for determining credit exposure and the extent to which the credit exposure will be taken into account and allows him to adopt regulations for this purpose.

"Derivative transaction" includes any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or part, on the value of any interest in, or any quantitative measure or the occurrence of any event leading to, one or more commodities, securities, currencies, interest, or other rates, indices, or other assets.

EFFECTIVE DATE: October 1, 2012

**§§ 24 - 29 — FIDUCIARY POWERS OF CORPORATIONS OTHER THAN BANKING INSTITUTIONS**

Current law generally prohibits corporations, other than banks, from receiving any money, securities, or other personal property or real estate in trust, to manage on someone else's behalf, unless the corporation is specifically allowed to do so by state statute or a special act of the General Assembly. If allowed to act as trustee, the corporation must obtain a license from the banking commissioner.

This bill broadens the prohibition to apply to other nonbank entities instead of just corporations, and makes conforming changes. An

“entity” is defined as a corporation, joint stock company, association, partnership, limited partnership, unincorporated organization, limited liability company, or similar organization, but not a corporation of which the majority of shares are owned by the United States or any state. The bill also expands the trustee licensing requirements and exemptions to apply to all such nonbank entities instead of only to corporations, and makes a number of additional conforming changes.

EFFECTIVE DATE: October 1, 2012

### **§ 30 — DE NOVO BRANCHES OF OUT-OF-STATE BANKS**

Under current law, an out-of-state bank, other than a foreign bank, may, with the banking commissioner’s approval, establish a de novo branch in Connecticut as long as the bank’s state allows Connecticut-based institutions to do the same there, among other requirements. Current law allows the commissioner to waive this reciprocity requirement in limited circumstances. The bill eliminates this reciprocity requirement altogether.

EFFECTIVE DATE: Upon passage

### **§ 32 — RENTAL SECURITY DEPOSITS**

PA 11-94 eliminated the requirement that landlords pay a minimum 1.5% interest rate on residential security deposits. The bill clarifies that this change does not affect security deposits before January 1, 2012 (PA 11-94’s effective date).

EFFECTIVE DATE: Upon passage

## **BACKGROUND**

### ***National Council of State Housing Agencies***

The National Council of State Housing Agencies is a nonprofit, nonpartisan organization created by the nation's state Housing Finance Agencies to coordinate and leverage their federal advocacy efforts for affordable housing.

### ***Nationwide Mortgage Licensing System***

The Nationwide Mortgage Licensing System was implemented

pursuant to a uniform mortgage licensing project under the auspices of the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators.

**COMMITTEE ACTION**

Banks Committee

Joint Favorable Substitute

Yea 17 Nay 0 (03/15/2012)